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*Presiede:*

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nell'Università Tor Vergata di Roma)*



**AGOSTINO LA BELLA**

(c.s.)

Nell'aprire la seduta odierna, desidero ringraziare il prof. Fanara e tutti gli organizzatori di questo interessante convegno e presentarvi gli autorevoli relatori di questa mattina.

Parlerà per primo Mr. John Swift, responsabile dell'*Office of the Rail Regulator* del Governo inglese, il quale tratterà i profili politici, economici e giuridici della privatizzazione del trasporto ferroviario inglese.

Seguirà la relazione del prof. Marco Ponti, docente di economia dei trasporti nell'Istituto universitario di Architettura di Venezia, sul tema della gestione dell'infrastruttura e dell'esercizio nel trasporto su rotaia (profili tecnico-economici).

Infine, il dott. Antonio Laganà, Coordinatore del progetto allocazione attività divisioni/impresе delle F.S., ci intratterà sull'affascinante tema della rete europea delle *freeways*.

I lavori di questa mattina si presentano quindi particolarmente impegnativi. Non volendo sottrarre altro tempo alle relazioni, pregherei quindi Mr. Swift di prendere la parola.



*RELAZIONI*



**JOHN SWIFT**

*(Responsabile dell'Office of the Rail Regulator del Governo Inglese)*

THE POLITICS, ECONOMICS AND LAW  
OF THE RECONSTRUCTION AND PRIVATISATION  
OF THE RAILWAYS IN THE UNITED KINGDOM

*Introduction.*

I would like to express my thanks to the CUST for the opportunity of assisting in this Convegno. It takes place at a time of great opportunities for the further development of an integrated European railway.

*1. The Link between Politics, Economics and the Law.*

I have entitled my contribution to your Conference - The Politics, Economics and Law of the Reconstruction and Privatisation of the Railways in the United Kingdom. Whether or not the State owns the infrastructure and businesses used for the transport by rail of passengers and goods, the Government has a duty to ensure that the system chosen serves the interests of the State and its citizens. An efficient economy is dependent upon it. And an efficient transport system is essential for the global competitiveness of the State. Between 1992 and 1997 the United Kingdom lacked any consensus between its major political parties on the scope of the ownership and control of its railway system. Since the election of the Labour Government in May 1997 there appears to be a consen-

sus to build on a system of private ownership and public controls, exercisable by among others the Rail Regulator.

As to Economics, the United Kingdom has combined privatisation of its utilities with liberalisation and the removal of artificial barriers to entry. Although we have - as Regulators - the “tool boxes” to control unfairly high charges by utilities - the RPI - X approach (inflation minus the figure set by the Regulator) - the main emphasis is to promote the interests of users and consumers through the introduction of competition. But in respect of a subsidized and franchised passenger railway there is a tension between ‘open access’ to the network and the rights to enjoy protection from competition.

As to Law, the United Kingdom has taken controls away from the grey area of political interference into the area of transparent rules enforceable by independent regulators. There is a matrix of contracts and licences designed to confer rights, impose obligations and create incentives for improved performance.

In transport markets, more than in any other utility, tensions inevitably exist between the role and powers of an independent regulator and the government responsible for ensuring that value for money is achieved for subsidy. The most effective regulation is that which achieves or promotes a more effective industry and the delivery of user benefits, but also achieves acceptance by Government that independent regulation works politically and retains legitimacy for the system of separation of powers. That is what my office has sought to achieve since December 1993. Now I would like to describe the background to the privatisation generally, the railways more fully and the particular functions which the Regulator is called on to perform.

## *2. Railways the Last of the Major Privatisations.*

In the early 1980’s the United Kingdom, with its previous Government in a strong position in the country and with vivid memories of strikes, poor service and high prices, took radical action to



reduce the level of State ownership of its utilities. The perceived benefits to a society of privatisation of utilities are: access to international capital markets for future investment, enabling private capital, rather than the resources of the State alone, to sustain such investment; improved efficiencies and performance through the introduction of private sector management skills; incentives for further improvements in efficiencies and performance through rigorous and challenging price controls; improvement in industrial relations; and the exposure of inefficiencies in the employment of labour and capital; liberalisation and competition, where appropriate; and finally, *independent regulation*. Thus between 1984 and 1989 the United Kingdom privatised its telecommunications, gas, electricity and water industries: about eight per cent of Gross National Product.

In each case, privatisation required legislation, specific to the sector to be privatised, and included a set of public interest objectives which each sector Regulator has a duty to promote or secure. Thus in all cases privatisation is seen as a means to an end. To the improvement of value for money for taxpayers and consumers in the relevant markets.

### **3. *UK Experience since 1992.***

In terms of restructuring and liberalisation, the UK railway network is at a more advanced stage than any other in the European Union. We have accumulated much experience, which we will gladly share, and we can suggest some useful models which others may be able to adapt to their own circumstances.

### **4. *The Concept of Independent Regulation of the Railway.***

To begin with, some basic facts about what I am and what I do. Since December 1993 I have been the United Kingdom Rail Regulator, appointed by the Government under the provisions of the Railways Act passed by the British Parliament in 1993. I am the

head of a non-ministerial Government Department, at a salary fixed by the Government. I have a five year contract with the Secretary of State (Minister for Transport) but, as a statutory “office holder”, I am independent of the Executive Government. The Railways Act 1993 places upon me certain duties to promote the public interest. And I have powers to approve *contracts* and to enforce compliance with *licences* which enable me to fulfill those duties. I must also submit to the Secretary of State my Annual Report. That is placed before Parliament.

### *5. The Challenge of Privatisation of the Railways.*

When the Conservative Government set about privatising the railways in 1992, one of the key decisions that they took was to separate the infrastructure from the business of running the trains. This went further than the EU Directive 91/440 requirement. The whole of the network infrastructure, the track, the stations, the signalling and the power supply systems was transferred in April 1994 to a new Government owned Company, Railtrack, privatised in May 1996<sup>1</sup>. The business of running the passenger trains was transferred to new subsidiaries of British Railways (the State owned Corporation) and then franchised in 1995-1997 to 25 separate train operating companies. They run trains in the geographical areas to which their franchises apply. New freight operating companies were established and transferred to the private sector. And all the passenger rolling stock, the traction units and trains, were sold separately to three new owners. It was a revolutionary change, which took about three years to finally complete<sup>2</sup>.

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<sup>1</sup>Figure 1 (pag. 101) describes the assets transferred to Railtrack which must be maintained and renewed.

<sup>2</sup>Figure 2 (pag. 102) illustrates the “new owners” of the railway, their basic functions and their interrelationships.

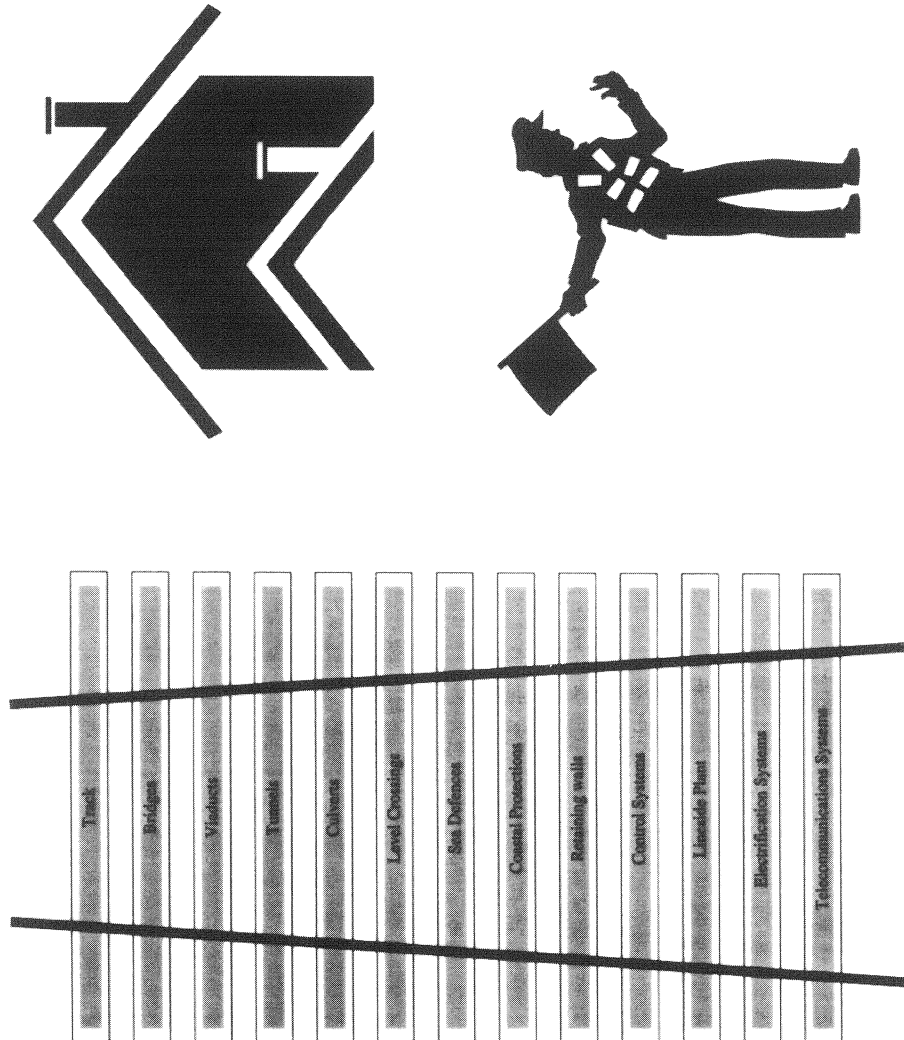


Figure 1

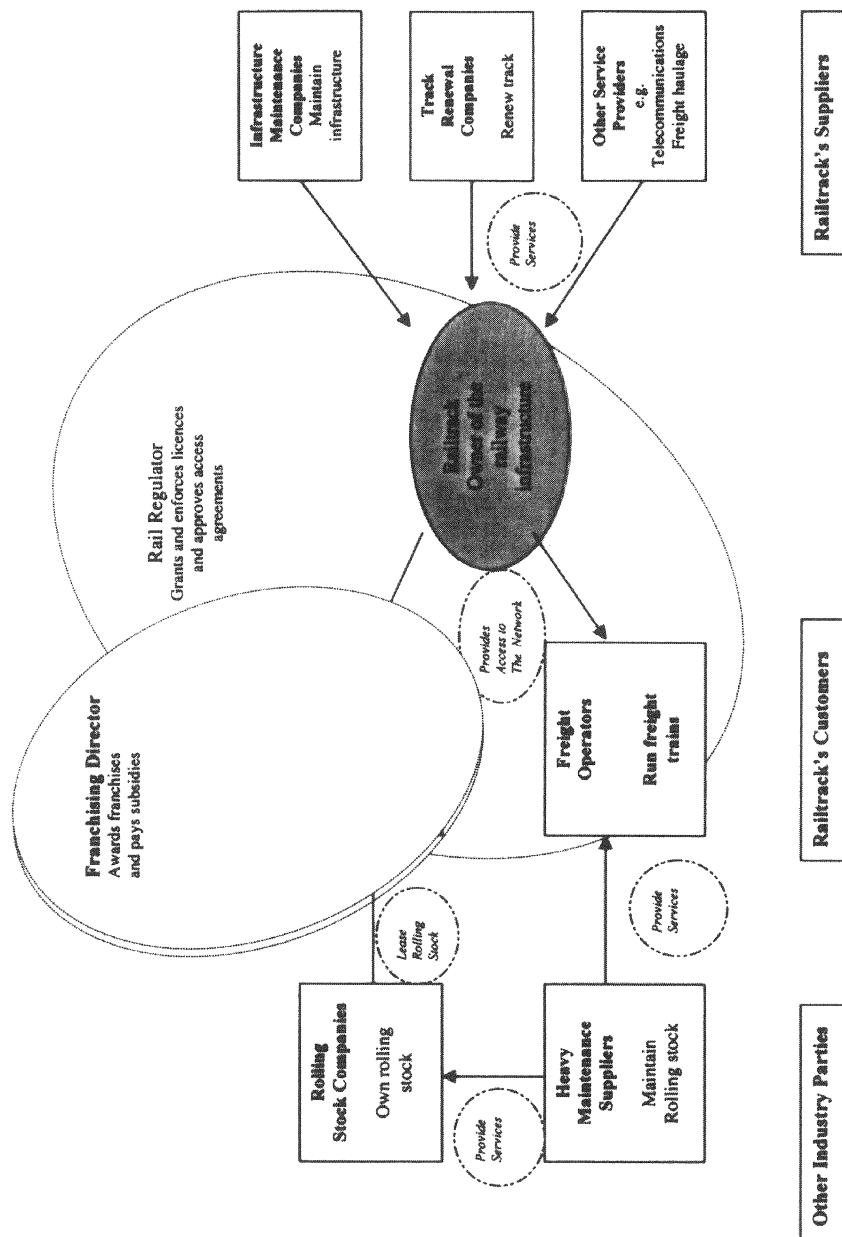


Figure 2

6. *Government Subsidy and the Need for Public Control over Use of Subsidy.*

A key aspect in which the privatisation of the railways differed from the privatisation of other utilities in the UK was, and still is, in the matter of subsidies. The passenger railway receives subsidies, currently £1.7BN, from two sources - from the taxpayer through central government and subsidies from local government to local railway companies through regional Passenger Transport Authorities.

It is estimated that by 2003 the British taxpayer will benefit by some £6BN in repayments to the Treasury from profitable railway companies. But the requirement for political decision-making on the future distribution of resources to the railway will remain well into the 21st century. Revenues from fares alone will be insufficient to pay for and should not be expected to pay for socially necessary transport services.

7. *The Government Policies Announced in Summer 1998.*

In July this year the new Government, which fought hard against rail privatisation in opposition, published a Transport White Paper which promised new legislation, building on the existing structure but looking for more cohesion and more political controls. The Government is pursuing an integrated transport policy, which includes a commitment to provide railways operated in the public interest by commercial railway companies. The Government announced, in its White Paper, the creation of a new Strategic Rail Authority which will subsume the functions of the Office of the Passenger Rail Franchising Director.<sup>3</sup> This White Paper also reaffirms the Government's continuing commitment to the independent

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<sup>3</sup>The Franchising Director, a Government Department responsible for selling the passenger train operators into the private sector, also "regulates" them by requiring standards of performance on punctuality, reliability and overcrowding in return for payments to operate minimum passenger service requirements.

regulation of the railways through the Office of the Rail Regulator, which will remain entirely separate from the Strategic Rail Authority. The White Paper is a statement of Government intent, which will require new legislation.

#### **8. *The Main Focus of the Office of the Rail Regulator.***

The Office of the Rail Regulator occupies a central position in 'regulating' monopoly, anti-competitive conduct and more generally in seeking to ensure that the new system continues to provide improved value for money for passengers, freight users and taxpayers. Thus we have our own commitments which involve determined action:

- To be vigilant in the protection of passengers, welcoming the benefits both of cooperation and of a competitive structure in the supply of new passenger services.

- To boost the emerging freight market and to root out any discrimination against it, or within it, or any neglect of its plans for growth.

- To require Railtrack, as the railway infrastructure provider, to raise its game substantially in investment, in performance, in accountability to its customers, in the quality of information supplied to the market and in its team playing in those areas where the railway industry must move together to secure improvements.

- To be vigilant lest any re-integration or further concentration of the industry could bring about harmful monopolies or unfair discrimination.

- To remove any unnecessary burdens of the regulatory system without adverse interest on the public interest.

#### **9. *Specific Substantive Issues of Regulatory Concern:***

##### **(i) *Competition v co-operation***

While privatisation generally has been associated with liberalisation and reducing barriers to entry we have learned that public

transport services, not least because of subsidy, do require special treatment.

The Regulator's function here is to provide new opportunities for passengers by opening the network to competition gradually. By next year up to 20 per cent of the existing railway companies' revenues will be opened to competition from new operators. The initial franchises were based on geographical territories for each train operating company; we are now at a point where we are approving track access rights to operators to work into but not throughout each other's territories. These opportunities to provide new services in competition with existing operators must not be at the expense of compliance with duties to co-operate in the provision of network benefits.

(ii) *ROSCO'S*

The lack of regulation of the rolling stock leasing companies has been of political and economic concern for the past four years. I was asked by the Government this year to determine if these companies might be in a position to take unfair advantage of train operators as the only suppliers of passenger rolling stock. My report concluded that they do have market power, and that undertakings should be obtained to prevent its misuse. This is a case where, with the benefit of hindsight, it might have been preferable to include the ROSCO's as fully regulated and subject to public interest obligations enforceable through licences.

**10.** *Regulation and Accountability.*

(i) *General principles of Due Process*

Section 4 of the Railways Act 1993 imposes upon me an important duty of accountability as the independent regulator. I am accountable to the Courts if there is illegality, irrationality or procedural impropriety in my decision making process. I am accountable to Parliament through the scrutiny of our Parliamentary Select

Committee procedure. Anyone who believes that they may be adversely affected by the Regulator's decision, and who has a legitimate right to challenge them, may seek to do so in the High Court.

I believe that we have an institutional framework which is sound, where the rule of law does prevail and where improvements can and must continually be made by regulators to ensure greater legitimacy and greater consent for the regulatory system. The demand, rightly, is for transparency, predictability and consistency by and as between the different regulators.

(ii) *The constitutional importance of the licence*

19. Important protection to all railway operators is provided by the matrix of contracts and licences which govern their activities. It is a feature of our utility regulation that regulated activities are conducted through the grant of a licence issued by the appropriate regulator, acting under Government authority. A licence sets out the rules which govern the lawful conduct of the business - what the utility concerned may do and what it may not do. These rules derive their legitimacy from the relevant Act of Parliament. This licence is in addition to and quite separate from the award of a *franchise* to a train operating company, which is a contract to provide services in exchange for subsidy or repayment, for some, in the latter years of their franchise.

(iii) *UK concerns over reintegration of the railway*

Railtrack's licence for example requires the company to seek the consent of the Regulator if it proposes to acquire any interest in train operating or in rolling stock companies. The licence imposes this control for two main reasons, each connected with the public interest objectives of the Railways Act.

The first is that those who are dependent on Railtrack for efficient and fair services should have an expectation that Railtrack's



monopoly cannot be used to favour a subsidiary, were it to own a train operating company or a rolling stock leasing company.

The second is that state-funded revenues which support Railtrack's business should be used for the maintenance and renewal of the railway network and should not be diverted to other activities. That licence condition, which is intended to focus resources on the railway network, is consistent with the United Kingdom's obligations under EU law in respect of Council Regulation EC91/440 concerning railway operations.

(iv) *Rights of appeal against regulatory decisions*

Licences can be changed by agreement of the Regulator and the licensee. But what if the Regulator proposes changes and the licensee regards the new conditions as contrary to the interests of shareholders, outside the spirit of the governing statute or otherwise unreasonable. The system we have allows for an intermediate step before any such modification can be made to the licence. This step is the referral by the Regulator of his proposed changes to the United Kingdom's Monopolies and Mergers Commission. The Commission will look carefully at the public interest implications of the new conditions and will either accept, reject or modify the Regulator's proposals.

(v) *Consultation with those affected by the decision*

To be effective and retain credibility, the regulatory system must practise and display some form of consultation process appropriate to the decisions it has to take. In the Office of the Rail Regulator we have consulted widely before every one of the important decisions that we have taken - on the prices charged by the owner of the railway network, on competition, on the standards required of railway operators, and other 'public interest' issues. Other utility regulators act in the same way. These processes have been

reviewed by the National Audit Office (acting on behalf of Parliament) and generally approved.

The regulator's goal is to make decisions which are right and fair, given the width of discretion which regulators have as to the substance of the decisions they take. The greater the area of discretion and the greater the range of possible decisions that could be taken, the more it is incumbent on the regulator to limit the areas of uncertainty as soon as he can in the decision-making process. Regulators should also work together to see whether common procedures can be introduced, so that a company regulated in more than one sector of the economy should not find itself exposed to different, though justifiable, regimes by different regulators in different sectors.

## **11. *EU Aspects of UK Rail Regulation.***

I am the International Rail Regulator for the United Kingdom. This post is common to all EU countries and derives from two EU Council Directives to establish licensing and access regimes for certain classes of international railway services. These Directives have been implemented in UK law as the Railway Regulations 1998 and their combined effect is to strengthen the ability of prospective operators to obtain access to the EU rail network on non-discriminatory terms for services falling within the scope of Article 10 of Directive 91/440.

The International Rail Regulator has powers on appeal to modify the agreements entered into by infrastructure managers and to specify the terms of agreements where access has been refused. In the United Kingdom we have consulted widely on IRR guidance and also on the Regulator's criteria and procedures for the consideration of appeals. The next stage involves building on this progress, and I am pleased that work is now well underway to take forward the legislative agenda set out in the Commission's White Paper 'A Strategy for Revitalising the Community's Railways'.

I also strongly support the concept in the White paper of Trans-European Rail Freight Freeways where the service given to freight on specified international routes is improved, with reduced frontier formalities and 'one-stop-shops' to coordinate customers' needs. My office is represented on the High Level Group set up by the Commission to establish the ground rules for TERFF operations. This presents exciting challenges and there is important scope here for development.

## **12. *The UK at the Threshold: Next Steps.***

Looking now towards the future and the priorities facing regulation of the railway in the United Kingdom, I believe that the present structure of our railways, marked by separation of the infrastructure from train operations, can sustain a successful railway and provides the base from which operators and the funding authorities can plan necessary expansion and development, taking into account both the structure of the industry and the aims and policies of the Government. I also believe that the current public sector and private sector partnership is the best way forward and that successful partnership requires an appropriate balance to be maintained between Government control and unregulated market forces.

Important achievements have taken place over the past four years. The most ambitious and challenging project on the British railway network has been the proposed renewal and upgrading of the line from London to the Midlands, North West and Scotland. This was agreed and approved by me in June 1998 and is the result of a new risk-sharing agreement between Railtrack and Virgin Rail (Richard Branson's Company), at a likely combined cost to both parties of some £2.5BN. English Welsh and Scottish Railway Limited, the new owner of most of the former British rail freight business, has committed itself to major investments in new rolling stock in excess of £500M, while orders for new passenger rolling stock for delivery by 2002 amount to renewal of about 20 per cent of the whole fleet.

In brief:

- the separation between the infrastructure and the operation of the trains has been shown to be workable, in terms of safety and the efficient operation of the network: the contracts which bind together the different parts of the industry are capable of generating improvements in operational performance;
- the process of privatising the railway has been arduous and costly, certainly in the short term costs of conversion from a single state owned company to over 100 interconnected private companies;
- the taxpayer stands to benefit from a reduction in subsidy and tax payable by privatised and profitable companies;
- passengers and users stand to benefit through greater investment in new infrastructure, rolling stock, information and quality of service: but the passenger dividends in these areas are yet to show substantial increases;
- the Government is committed to the principles of effective and accountable regulation, including the retention of a role for an independent economic regulator;
- the UK experience is one of value to other EU countries in indicating that politics, economics and legal principles can combine fruitfully to produce solutions different from and hopefully better than state ownership and state control - for taxpayers, users and citizens generally.

**AGOSTINO LA BELLA**

*(c.s.)*

Desidero ringraziare Mr. Swift per la sua brillante relazione.

Il relatore ha collocato i problemi del trasporto su rotaia all'interno di un processo generale, che è poi quello di cambiamento del modo di concepire il ruolo dello Stato e dell'intervento pubblico in un Paese moderno.

Il sistema descritto da Mr. Swift costituisce per noi un modello di riferimento, tenuto presente che il Regno Unito è stato il Paese europeo che, non solo ha impostato per primo una politica di privatizzazione su vasta scala, ma che ha perseguito detta politica con maggiore determinazione ed efficacia.

Pertanto la relazione, che è stata appena presentata, ci offre spunti molto stimolanti per il dibattito.

Dò adesso la parola al prof. Marco Ponti per la sua relazione.